IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1226 OF 2005

Shri Subhash Yashwant Mane ...Petitioner.

V/s.

Sou Hemlata Vijaysing Patil & Ors. ...Respondents.

Shri N.V.Bandiwadekar, adv. for the Petitioner.
Shri A.B.Borkar, adv. for the Respondent No.2.

CORAM: R.S.Mohite, J.
DATE : 28th November, 2005.

P.C.:

1. By this order, Petitioner seeks to challenge an order dated 17/01/2005 passed by the Joint Civil Judge, Senior Division, Kolhapur below Exhibits 62, 65, 71 and 73 in Special Civil Suit No.324 of 1999. By the impugned judgment and order, Plaintiff has been directed to deposit Rs.3,77,728.48 and Rs.7,62,080 as the amount of calculated deficit stamp duty and penalty thereon as per Section 34 of the Bombay Stamp Act. It is argued in this Petition that the Agreement in question did not amount for Agreement to Sale and it was an Agreement to develop the property. The learned Advocate for the Respondent pointed out Clause 4 which talks about the sale of the property. It appears that Clause 6 which has been relied upon by the Petitioner relates to the execution of irrevocable power of attorney

and Development Agreement. The suit also appears to be for specific performance to execute the said documents. In my view, in order to determine the nature of the document in question, evidence has to be led in the suit. In the meanwhile, impugned order has been passed on a concession made by the Advocate for the Petitioner to the effect that document has to be impounded. In the Petition, it is not denied that such concession was made by the Advocate for the Petitioner.

2. In the circumstances, in my view, ends of justice will be met if a direction is given that amount deposited will not be remitted to the Collector under section 37 of the Bombay Stamp Act and will be retained and invested in a fixed deposit in a nationalised bank pending the disposal of the suit for such term as the Trial Court deem fit and proper. If a decree is passed in favour of the Petitioner who is the original plaintiffs and if the Agreements are held to be a deemed conveyance, then the Court will be at liberty to take further proceedings under section 37. It was also pointed out by the Petitioner that under the agreement, one half of the stamp duty was payable by the Defendants who had executed the documents. This aspect is to be considered by the Trial Court. If Trial Court comes to a conclusion that agreements in question are not conveyances within the meaning of article 25 of the

Schedule to the Bombay Stamp Act then the Court will also be at liberty to make refund of the amount. If amount of stamp duty and penalty are deposited, the Court will be at liberty to admit documents.

3. Subject to these directions, Writ Petition is dismissed.

(R.S.MOHITE, J.)